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Supreme Court, U.S.
FILED

No. 09-____ 09-145 JUL 31 2009

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In The

Supreme Court of the United States

EDWARD BARSCH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

EDWARD A BARSCH
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(510) 887-4127

Edward A Barsch Pro Se

QUESTION PRESENTED

In Petitioner's request for EN BANC hearing in the Appeals Court Petitioner listed four unanswered points of law that have never been addressed by either the Ninth District Court or the Ninth District Appeals Court. App. 10. When these issues were raised by Petitioner in various pleadings in the District Court these issues were simply ignored. The Appeals Court dismissed most of Petitioner's reasons stated in request for hearing the case EN BANC as being "***NOT PERSUASIVE***." App. 10. How well documented violations of important constitutional issues can be dismissed as "***NOT PERSUASIVE***" is beyond Petitioner's comprehension. Does that mean that the United States Constitution is a meaningless document?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Edward A Barsch respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit appears at App. 1 to the petition and was not reported.

The decision of the United States District Court for the Ninth Circuit appears at App. 4 to the petition and was not reported.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit decided Petitioner's case on March 2, 2009. Petitioner timely filed a PETITION for REHEARING and REHEARING EN BANC in the Ninth Circuit Court of Appeals. Petitioner's request was denied by the Ninth Circuit Court of Appeals on Apr. 22, 2009. Petitioner timely filed a petition for certiorari. Petitioner is paying docketing fees and submitting a petition in compliance with Rule 33.1 by August 2, 2009. Petitioner is handicapped and has requested and been granted an extension of time to file the

petition. Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "and to petition the Government for a redress of grievances and to be given an opportunity to be heard at a meaningful time in a meaningful way."

The Fourth Amendment to the United States Constitution provides prohibition:

> "against unreasonable *search and seizure.*"

The Fourteenth Amendment to the United States Constitution provides:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Appellant has a son (Wayne Barsch) who suffers from being manic/depressive also known as being bipolar. On January 31, 2007 he came to my house something he had not done for several years. I soon realized that he was having a major psychotic incident. I went to the Hayward, CA police station to

request that Wayne be taken into custody for a 3-day psychiatric hold for evaluation. Instead the Hayward Police mounted a swat team approach to the situation and set up surveillance of my residence. While I was at the police station Wayne left my house and was talking to a neighbor several houses over. The swat team then took Wayne into custody, entered my house and confiscated a $30,000 firearm collection as well as confiscated other Petitioner's property that were not firearms (expensive knives and a $375 air rifle). The police report that was filed about this incident was 80% false. Among the major false statements in the police report was that I (Edward Barsch) had given the police permission to enter my home, that the firearm collection belonged to Wayne Barsch, that an alleged stabbing victim from Emeryville, CA (some 15 miles from my house and supposedly 12 hours earlier) was in my house. I filed an official complaint (3 pages) with the Hayward, CA police department documenting the falsity of the police report. The reply to my complaint was that all my charges were "UNFOUNDED." On January 30, 2007 C07-00615 SI was filed by Edward A Barsch in the Ninth Circuit District Court. The Hayward Police Department has never disputed the falsity of that police report. On 11/15/2007 Petitioner filed a request for judicial notice. App. 8. The District Court's response was not in accordance with Federal Rules of Evidence Rule 201 which provides that if the request is denied then the moving party has the opportunity to provide additional information. The District Court then denied the request for judicial notice on the grounds that "it

contains improper argument." Under Federal Rules of Evidence Rule 201 a moving party denied a request for judicial notice has a minimum of 10 days to provide additional documentation. On November 26, 2007 the District Court in a combined ruling denied Petitioner's request for judicial notice and granted Respondent's request for summary judgement without allowing Petitioner any opportunity to file a motion opposing Respondent's request for summary judgement or to respond to the denial of the request for judicial notice. The time frames set by the District Court are direct violations ipso facto of Petitioner's First Amendment rights by not allowing Petitioner to be heard. App. 7. The District Court used the *Maryland v. Buie*, 494 U.S. 325, 327 (1990) case as the controlling precedent. However the *Maryland v. Buie* case does not support the District Court's ruling but in fact considering the circumstances of Petitioner's case is completely contrary to the precedent set in *Maryland v. Buie*, The Hayward, CA police department's "PROTECTIVE SWEEP" is clearly an illegal protective sweep using the *Maryland v. Buie* criteria as cited by the District Court. The Appeals Court has upheld the ruling of the District Court using the same flawed interpretation of the *Maryland v. Buie* precedent. App. 2.

REASON FOR GRANTING THE WRIT

I. Overview

Simple equity demands that the rulings of the District Court as well as the Appeals Court be reversed. Rulings of the District Court violated the Federal Rules of Civil Procedure and the Federal Rules of evidence. These erroneous rulings also violated Petitioner's First Amendment, Fourth Amendment, and Fourteenth Amendment rights.

II. Specific examples of violations of Petitioner's rights

A. On 11/15/2007 Petitioner filed a REQUEST FOR JUDICIAL petition. The District Court did not respond in accordance with the Federal Rules of Evidence. Rule 201. That rule provides only two types of responses neither of which the District Court followed. The District Court denied the request except for 1 item on the grounds that the request for judicial notice contained "IMPROPER ARGUMENT." Since the Petitioner was operating IN PRO PER I simply copied the format of Respondents' similar request which the District Court accepted without comment. However the District Court rejected Petitioner's request that was in the same format as the Respondents' request. Federal Rules of Evidence Rule 201 does not specify any format but is content driven. The District Court violated the Federal Rules of Civil Procedure and did not process the request according to mandated rules. The District Court also violated

Petitioner's First Amendment right to be heard by not allowing Petitioner to respond. Federal Rule of Civil Procedure Rule 5 provides that a party be allowed a minimum of 10 days to respond.

B. As part of the District Court's ruling denying Petitioner's request for judicial notice, the District Court granted Respondent's request for summary judgement. Again the District Court did not permit Petitioner to file any motion in opposition to Respondent's request for summary judgement Again this is a clear violation of Federal Rules of Civil Procedure Rule 5 as well as the Petitioner's First Amendment right to be heard.

C. Both the District Court and the Appeals Court rely on the *Maryland v. Buie* precedent as justifying their decision that Petitioner's Fourteenth Amendment rights were not violated by the protective sweep done by the Hayward, CA police. App. 2. According to the standards set forth in *Maryland v. Buie* the protective sweep done on Petitioner's residence was clearly illegal. *Maryland v. Buie* does not allow a protective sweep to remove any property of any kind from the residence where the protective sweep is done. The protective sweep was based on false information that the police knew was false. The police removed Petitioner's firearm collection worth $30,000 at the time. At no time in the entire court proceedings have any of the Respondents furnished the Federal law or California law that authorized the confiscation of Petitioner's firearm collection.

III. Importance of the Issue

The issue is important because if the District Court and the Appeals Court rulings are upheld then the United States is no longer a free country but has become a police state and all the platitudes about the constitutional freedoms guaranteed in the United States constitution are meaningless. Having served in WWII when the enemy was the Third Reich (a notorious police state) to realize that the United States has become the same thing is an extremely bitter disappointment.

CONCLUSION

Petitioner prays that the Court grant a writ of certiorari, summarily vacate the order below and remand this case for further proceeding in light of the District Court and Appeals Court errors detailed by Petitioner as well as the incorrect decision based on the *Maryland v. Buie* precedent.

Respectfully submitted,

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD A. BARSCH, Plaintiff-Appellant, v. MICHAEL O'TOOLE, individually acting under color of law as Hayward City Attorney; et al., Defendants-Appellees.	No. 07-17385 D.C. No. CV-07-00615-SI MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Submitted Feb. 18, 2009**

(Filed Mar. 2, 2009)

Before: BEEZER, FERNANDEZ and W. FLETCHER, Circuit Judges.

Edward A. Barsch appeals pro se from the district court's summary judgment in favor of law-enforcement personnel and city district attorneys in

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his 42 U.S.C. § 1983 action regarding entry into his house and seizure of weapons. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment. *Universal Health Servs., Inc. v. Thompson,* 363 F.3d 1013, 1019 (9th Cir. 2004). We affirm.

The district court correctly determined that the defendant district attorneys were entitled to absolute prosecutorial immunity, *Imbler v. Pachtman,* 424 U.S. 409, 431 (1976), and that the defendant police officers are entitled to qualified immunity, because Barsch has not shown that they violated his constitutional rights, *Wilson v. Layne*, 526 U.S. 603, 609 (1999).

The district court correctly determined that Barsch's Fourth Amendment rights were not violated when police officers entered his house in conducting a protective sweep based on reports of multiple guns on this premises in the possession of Barsch's bipolar son, who reportedly was not taking his medication, making death threats, and saying that he had stabbed someone the night before. *See Maryland v. Buie,* 494 U.S. 325, 327 (1990) (holding that officers are not required to obtain a warrant for a protective sweep if it is "a quick and limited search of the premises" and done to protect the safety of the officers and others).

The district court also correctly determined that Barsch's Fourteenth Amendment due process rights were not violated by the sale/destruction of the weapons found in his house, because Barsch knew

that the weapons were seized in connection with his son's criminal case, that they were subject to being sold or destroyed, and yet he failed to intervene in his son's criminal proceedings to explain any claim that he had to the seized weapons. *See Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.,* 149 F.3d 971, 983 (9th Cir. 1998) ("The base requirement of the Due Process Clause is that a person deprived of property be given an opportunity to be heard at a meaningful time and in a meaningful manner." (citation and internal quotations omitted)).

Barsch's remaining contentions are not persuasive.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD A. BARSCH,
Plaintiff,
v.
MICHAEL O'TOOLE, et al.,
Defendants.
/

No. C 07-00615 SI

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S DUE PROCESS CLAIM

(Filed Nov. 26, 2007)

By order filed October 31, 2007, the Court granted in part defendants' motion for summary judgment, and directed further briefing on plaintiff's due process claim. The Court has reviewed the parties' supplemental papers and evidence, and for the reasons set forth below, GRANTS summary judgment in favor of defendants on plaintiffs' due process claim.[1]

LEGAL STANDARD

Summary adjudication is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if

[1] The Court notes that plaintiff's supplemental brief is largely devoted to arguing the merits of claims which were resolved in the October 31, 2007 order. In light of plaintiff's pro se status, the Court has considered those arguments. However, the Court finds no reason to change its analysis.

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In a motion for summary judgment, "[if] the moving party for summary judgment meets its initial burden of identifying for the court those portions of the materials on file that it believes demonstrate the absence of any genuine issues of material fact, the burden of production then shifts so that the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, specific facts showing that there is a genuine issue for trial." *See T.W. Elec. Service, Inc., v. Pac. Elec. Contractors Ass'n,* 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986)).

In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence, and draws all inferences in the light most favorable to the non-moving party. *See T.W. Electric,* 809 F.2d at 630-31 (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986)); *Ting v. United States,* 927 F.2d 1504, 1509 (9th Cir. 1991). The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

DISCUSSION[2]

Plaintiff alleges that his rights were violated because he has been "unlawfully deprived of his property that was illegally removed from plaintiff's residence." Complaint at 11:13-14. The Complaint also alleges that "Court order H40751 dated 5/22/06 caused plaintiff's property to be sold and the proceeds given to Wayne Barsch. This was done in spite of plaintiff's written objection that such action was illegal." *Id.* at 11:14-17. Plaintiff's supplemental brief regarding the due process claim states, in its entirety:

> RE note 9. Plaintiff did not have a complete listing of property taken from plaintiff's residence until after this complaint was filed and defense counsel as part of their response furnished a full transcript of Wayne Barsch's trial which was over a year since the actual incident had occurred.
>
> Plaintiff filed with the Assistant District Attorney's office four documents relative to this incident by hand delivering said documents to the assistant district attorney's office in Hayward, Ca. These documents were never responded to or even acknowledged as having been received other than the date and time stamped by the clerk when plaintiff presented such documents to the

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[2] The Court incorporates the background section of the October 31, 2007 order.

> Alameda County District Attorney's Hayward, Ca. office.

Supplement Brief at 6. Plaintiff has also submitted two invoices/shipping documents, one dated October 14, 1960, the other dated July 3, 1964, showing that firearms were shipped to Edward A. Barsch. Plaintiff's Request for Judicial Notice, "Enclosures 1 and 2."

"The base requirement of the Due Process Clause is that a person deprived of property be given an opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.,* 149 F.3d 971, 983 (9th Cir. 1998) (quoting *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965)). It is undisputed that plaintiff had notice that the weapons were seized in connection with the criminal case against his son Wayne. It is also undisputed that plaintiff knew that the weapons were subject to being sold and/or destroyed; plaintiff testified in his deposition that while the criminal case against Wayne was pending, he submitted letters to the District Attorney's Office asserting his ownership of the weapons. *See* November 5, 2007 Hom Decl., Ex. E (Barsch Depo. at 52). In addition, in the criminal case against Wayne, plaintiff filed, and subsequently withdrew, a demand for restitution from Wayne. *See* August 24, 2007 Hom Decl. Ex. B (May 22, 2006 transcript at 000067-68). Following Wayne's conviction, the seized weapons were sold or destroyed pursuant to court orders issued by the Alameda

Superior Court. *See* May 4, 2007 Hom Decl. Ex. B at 000074-85.

On this record, the Court concludes that plaintiff has not raised a triable issue of fact to defeat summary judgment on his due process claim. Plaintiff has not submitted any evidence suggesting that he did not have notice or an opportunity to be heard on his claim that he was the rightful owner of the seized weapons prior to their sale/destruction. *Cf. Jordan v. City of Lake Oswego,* 734 F.2d 1374, 1376 (9th Cir. 1984) ("That he chose not to avail himself of this opportunity does not detract from our conclusion that the procedures utilized prior to his termination were sufficient to accord with the due process requirements of the federal Constitution.).

CONCLUSION

For the foregoing reasons, the Court hereby GRANTS defendants' motion for summary judgment on plaintiff's due process claim and consequently GRANTS defendants' motion for summary judgment in its entirety. (Docket No. 32). The Court GRANTS in part and DENIES in part plaintiff's request for judicial notice. The Court accepts into evidence the two invoices/shipping documents attached to the request. However, the Court strikes the remainder of plaintiff's request as it contains improper argument.

IT IS SO ORDERED.

Dated: November 26, 2007

/s/ Susan Illston
SUSAN ILLSTON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD A. BARSCH, Plaintiff-Appellant, v. MICHAEL O'TOOLE, individually acting under color of law as Hayward City Attorney; et al., Defendants-Appellees.	No. 07-17385 D.C. No. CV-07-00615-SI Northern District of California, San Francisco ORDER (Filed Apr. 22, 2009)

Before: BEEZER, FERNANDEZ and W. FLETCHER, Circuit Judges

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

No further filings will be accepted in this closed case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD A. BARSCH,
Plaintiff-Appellant,

v.

MICHAEL O'TOOLE, individually acting under color of law as Hayward City Attorney; THOMAS J. ORLOFF, individually acting under color law as Alameda County District Attorney; LANCE KUBRO, individually acting under color law as Alameda County Assistant District Attorney; DARYL MCALLISTER, individually acting under color law as Patrol Captain of the Hayward Police Department; C. MARTINEZ, individually acting under color law as Hayward Police Officer; E. HUTCHISON individually acting under color law as Hayward Police Officer; C. HUMPERT, individually acting under color law as Hayward Police Officer; C. LINTEO, individually acting under color law as Hayward Police Officer; D. NISHIMOTO

No. 07-17385
D.C. No.
CV-07-00615-SI
Northern District
of California,
San Francisco

MANDATE

(Filed Apr. 30, 2009)

individually acting under color law as Hayward Police Officer; J. RIVA, individually acting under color law as Hayward Police Officer; P. DIVINAGRACIA, individually acting under color law as Hayward Police Officer; C. QUINN individually acting under color law as Hayward Police Officer; S. MITCHELL, individually acting under color law as Hayward Police Officer; BERNIE LICATA, individually acting under color law as Hayward Police Officer,

Defendants-Appellees.

The judgment of this Court, entered 3/2/09, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

/s/

By: Lee-Ann Collins
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 07-17385

EDWARD A. BARSCH
Plaintiff-Appellant

v

MICHAEL, O'TOOLE, individually acting under color of law as Hayward City Attorney; et al.
Defendants-Appellees

D.C. No. CV-7-00615-SI

PETITION TO REQUEST EN BANC HEARING

Appeal from the United States District Court
For the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Submitted March 13 2009

PURPOSE

Hearing by the full court is necessary to maintain uniformity of the court's decisions. Also the proceedings of the District Court as well as the Appeals court have left several important constitutional points of law unanswered. The opinions of the District Court as well as the Appeals Court conflict with a 1990 opinion of the Court of Appeals of Maryland in Maryland v Buie which is the case law precedent cited by the Ninth Circuit Court of Appeals. The Appeals Court ruling is in direct and substantial conflict with the Maryland Appeals Court .which is

the only precedent for the question of requirements for a valid

"***protective sweep***"

of a private residence. The meaning of the term "***DUE PROCESS***" seems to have been redefined from its traditional meaning of the "***RIGHT TO BE HEARD***" to mean the "***RIGHT TO BE IGNORED***"

INTRODUCTION

Apellant is appearing PRO SE.

In counsel's judgement there are four important constitutional points of law that have not been adequately addressed by both the District Court and the Ninth Circuit Appeals Court.

1. Although plaintiff/appellant has requested that the District Court recognize that filing a false police report is a felony offense under California law and that the Hayward California police department filed a report that was 75% false all such assertion by plaintiff have been ignored.

2. Another unanswered question is the scope of the Federal Rules. Plaintiff/appellant in his appeal requested that the Court state whether the rules are "guidelines" or are they "RULES". The District Court actions are not in compliance with the Federal Rules in processing plaintiff's request for Judicial Notice..

3. The meaning of the term "***DUE PROCESS***" has been changed from its traditional meaning of the

right to be heard to the "***RIGHT TO BE IGNORED***" by both the District Court as well as the Appeals Court. In the District Court plaintiff was not allowed to file a reply to defendants' request for summary judgement and in the Appeals Court during the criminal trial of Wayne Barsch plaintiff was allowed one sentence and then cut off in mid-sentence and not allowed to speak further. In both cases the respective Courts have ruled that plaintiff has been given due process in spite of the Courts refusal to allow the plaintiff to be heard.

PLAINTIFF'S ARGUMENT FOR REHEARING

The appellate court's decision dealt with only one facet of appellees' brief. Unaddressed were four major constitutional issues. These are listed in the appellee's order of importance

1. Do the principles embodied in the Constitution and federal laws apply to the Hayward California Police Department? The Hayward California Police Department has engaged in conduct that is prohibited by California laws governing police conduct. Appellee/plaintiff has documented that the Hayward California Police Department has filed a false police report.. This report is 75% false and the falsity of that report has been thoroughly documented as being false. Even the Hayward Police do not dispute the falsity of that report. The district Court has simply ignored all of plaintiff's such claims that the report is 75% false. Under California law filing a

false police report is a felony offense and the law does not contain any exception allowing police personnel to file false police reports with immunity. The District Court denied plaintiff's request for judicial notice that filing a false police report is a felony under California law. When citing a law under the rules of evidence covering judicial notice such notice is mandatory.

2. Another major violation of plaintiff's constitutional rights is the right to "DUE process". This is the right to be heard in a meaningful way. The District Court violated plaintiff's right to due process by granting defendant's request for SUMMARY JUDGEMENT without permitting the plaintiff to file a reply to defendant's request for summary judgement. Such treatment in not in line with the founding fathers ideals or the ideals expressed in the Constitution of the United States.

3. Another unaddressed issue is whether the Federal Rules of Civil Procedure are guidelines or rules that all courts must adhere to in their rulings. It is plaintiff's/appellant view that the the Federal Rules of Civil Procedures are not guidelines but are rules that must be adhered to without exception. The District Court did not process plaintiff's request for judicial notice in accordance with the Federal Rules for Evidence. What the District Court did was dismiss most of plaintiff's request for judicial notice on grounds that the format was not correct. There is no set format under the Federal Rules for Evidence but the facts being noticed are content driven. If

plaintiff's request for judicial notice is not clear then plaintiff must be given the opportunity for further clarification. Citing a law as a fact to be judicially noticed is mandatory. The district Court even dismissed the citation of California law regarding filing a false police report as a felony. The only fact that the District Court accepted was the plaintiff's presentation of bills of sale some thirty years earlier of two of the firearms illegally confiscated from plaintiff's residence. Yet the format of all items requested to be judicially noticed by plaintiff were in the same format as a request for judicial notice made by defendants; counsel. Plaintiff simply copied the format from defendants' counsel pleading. In spite of the District Court allowing defendants' request for judicial notice using the same format,, plaintiff's request for judicial notice was denied except for the one minor request that was in the same format as the requests denied as "***not in proper format***"

4. Another violation of plaintiff's constitutional guaranteed right that has been violated in this court action is the "right to trial". In a previous civil rights case that the plaintiff appealed to the Supreme Court, plaintiff was never allowed to go to trial. In that case as well as the current case there was never a trial. Trial was prevented by the District Court making capricious ruling not in accordance with legal precedents and ignoring pertinent information. Instead of being an independent section of government the court system seems to be as adjunct of the Police Protective League. In both cases if the matter had

gone to trial the outcome would have been completely different.

The one issue that the Appeals Court did address "the validity of the protective sweep conducted by the Hayward California police department" under close analysis of previous court precedents the Appellate Court's ruling is contrary to such established precedent .and as such must be reversed. Under Maryland v Buie there are several requirements for a protective sweep to be valid

1. The search must be reasonable. In the police report of the incident, the officer on scene stated that the the supposed stabbing took place in Emeryville, Ca 15 miles away by distance and at least twelve hours earlier by time. It is unreasonable to search plaintiff's house for this alleged stabbing victim. Yet the police report states that this supposed victim was in plaintiff's house in Hayward, Ca. Unexplained is how this alleged victim managed to get into plaintiff's residence. The Hayward police have never let the facts to get in the way of what they want to do.

2. The sole purpose justifying a protective sweep is to make sure that the officers involved in the arrest are safe. Plaintiff although 82 years old has never been arrested. The arrest of Wayne Barsch did not take place in or on plaintiff's residence. His arrest took place on a public sidewalk several houses over from my

residence where he was apprehended while taking to a neighbor. There was no nexus between plaintiff's residence and the protective sweep

3. Although the police protective sweep was done on the basis of false statements by the Hayward California police department, plaintiff would not object if the protective sweep was done as a "quick and limited search". This protective sweep was neither quick or limited. To quote verbatim from Maryland v Buie "*sSuch a protective sweep is not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found. The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises. Pp. 331-336*". The firearm collection confiscated from plaintiff's home was not readily recognized as firearms. The collection had been in storage for ten years and the individual firearms were still covered in cosmoline and wrapped in discarded clothing such as old socks, towels and sweaters.. Unless the packages were unwrapped to examine them no-one would be aware that the packages contained firearms. Ruling in Buie quoted by Appellate Court specifically refers to search as "cursory" to determine if there were individuals possibly posing danger to officers. Search by the Hayward California Police was anything but

cursory. One of my firearms not part of this collection was concealed in the garage in a small space behind a toolbox. I was surprised that that firearm was found. I estimate that unwrapping the firearms, removing the cosmoline and finding and recording the serial numbers took at the minimum 1 hour. This does not fit the description of "quick" as required by the ruling in Bruie. It does not fit the requirement of "limited" The objective of the protective sweep as stated in the police report was to confiscate those firearms. The police mention "multiple firearms" Unless a person is an arms dealer there is no restriction in the Constitution or federal law in the number of firearms that a law-abiding. citizen may own be it one or ten thousand.

4. Additionally in the Bruie ruling the district court reversed it decision allowing the red clothing seized as evidence to be used as evidence and ruled that the red clothing was inadmissible as evidence because it was illegally obtained. The confiscation of plaintiff's forearm collection worth $36,000 was clearly also illegal and in no way authorized by Maryland v Buie.l. At no time to this date have defendant's legal counsel quoted the applicable provision of California law that authorized the confiscation of plaintiff's property that also included items that were not firearms. The sole purpose of the protective sweep is to make sure

there is no individual posing a threat to the officers.

e The last page of the Appeals Court ruling faulted plaintiff/appellee for not intervening in the trial of Wayne Barsch. A reading of the transcript of Wayne Barsch's trial shows that after one sentence the court cut off plaintiff's testimony in mid-sentence and refused to permit him to thoroughly explain his position. If this is due process then the Soviet system is apparently the model upon which the American system of jurisprudence is based.

CONCLUSION

Appellant hopefully petitions the Appeals Court to give serious consideration of appellant's brief. Remedy and relief requested by appellant is the same as stated in the original brief filed by appellant.

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